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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166555

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 09, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance, a telephonic hearing was held on July 29, 2015, at Jefferson, Wisconsin. At the request of petitioner, the record was held open for one month for the petitioner to submit new medical information to support the medical necessity of the private SLT for petitioner to the Division of Hearings and Appeals (DHA). The new evidence and information would then be sent to Office of the Inspector General (OIG) for a Reconsideration summary to DHA and the petitioner's representative. The petitioner's representative did not submit any new evidence to DHA even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's April 8, 2015 prior authorization request for a speech language therapy (SLT) evaluation and twice weekly SLT for the 12 weeks of the summer of 2015, due to lack of established medical necessity.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], speech language pathology consultant  
Office of the Inspector General (OIG)  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

## ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an 11 year old resident of Jefferson County who resides with her family in a private home. Her mother and representative is [REDACTED].
2. The petitioner is diagnosed with Cornelia de Lange syndrome, ADHD, oppositional defiant disorder (ODD), mental retardation, chronic otitis media, and hearing loss.
3. Petitioner attends the 5<sup>th</sup> grade at [REDACTED] School in the [REDACTED] School District. She receives special education and speech/language therapy per her Individual Education Plan (IEP). She has an aide to assist her during the school day.
4. The petitioner's individual educational plan (IEP) provides for petitioner twice weekly individual speech and language therapy (SLT) for about 30 minutes per session through the [REDACTED] School District. The IEP team is considering for [REDACTED] the use of an alternative communication system or augmentative communication devices (such as an iPad), due to petitioner's "highly unintelligible speech."
5. The petitioner also receives private SLT as mostly paid by [REDACTED] insurance during the summer months of 2015.
6. Petitioner's mother's primary concerns appear to be for MA to reimburse for the petitioner's co-payments owed after [REDACTED] has paid for most of the petitioner's SLT services during the 12 weeks of the summer of 2015.
7. On or about April 8, 2015, petitioner's provider, [REDACTED], requested on behalf of the petitioner prior authorization (PA) for a speech language therapy (SLT) evaluation and twice weekly SLT for 12 weeks during the summer of 2015 at a requested cost of \$4,278.52. See Exhibit 2.
8. On or about May 6, 2015, the Office of the Inspector General (OIG) sent a notice to the petitioner's parents denying the prior authorization request for an SLT evaluation and private, individual speech and language therapy because the submitted documentation did not establish the medical necessity of the requested private SLT as required by the Wisconsin Administrative Code.
9. The OIG denial of petitioner's SLT services was because of the following reasons: a) the petitioner has not shown progress in her SLT skills with past private SLP services, and the provider has not established with documented quantifiable progress as a result of SLT over the years; b) The IEP team is considering the use of an alternative communication system or augmentative communication devices (such as an iPad), due to petitioner's "highly unintelligible speech;" c) the provider has not established that the requested SLP services are required in addition to school services during the school year; d) provider has not established any coordination of private SLP care with school SLPs during the school year; e) petitioner's school SLP services appear sufficient; and f) the PA did not establish the medical necessity of the requested private SLP services during the summer of 2015.
10. The record was held open for petitioner's representative to submit documentation to establish the medical necessity of the requested private speech therapy during the summer months of 2015, and for an OIG reconsideration summary and petitioner's representative's response. However, petitioner's representative failed to submit any new evidence to DHA even by the date of this decision. See above Preliminary Recitals.

11. The petitioner's representative was unable to provide reliable evidence to refute the Department's evidence which denied petitioner's speech therapy request due to failure to establish documentation of the medical necessity of the PA request individual speech therapy.

### DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. "Medically necessary" services are those "required to prevent, identify or treat a recipient's illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of "medically necessary" at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it was petitioner's representative's burden to demonstrate that petitioner qualified for the requested speech and language services.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is "**medically necessary.**" A "medically necessary" service is

[A] medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

5. **Is of proven medical value or usefulness** and, consistent with s. DHS 107.035, is not experimental in nature;

6. **Is not duplicative with respect to other services being provided to the recipient;**

7. Is not solely for the convenience of the recipient, the recipient's family or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is **cost-effective** compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. **Is the most appropriate supply or level of service** that can safely and effectively be provided to the recipient.

*Wis. Admin. Code* §DHS 101.03(96m).

The crux of the Division's denial of petitioner's request is that while [REDACTED] has speech and language problems, those SLT problems are being addressed by her IEP by twice weekly speech and language therapy for 30 minutes; b) private SLT through [REDACTED]; and c) possibly moving in the direction of the use of an alternative communication system or augmentative communication devices (such as an iPad). The petitioner's representative did not submit evidence to establish the medical necessity for individual speech and language therapy during the summer of 2015. The question to be determined by the MA program was not just whether some SLT problems are present, but why the specific skill of a private SLP is medically required for two sessions per week for 12 weeks, given the lack of documentation for the requested SLP services. The MA definition of medical necessity requires that services provided be basic and necessary.

Ms. [REDACTED] in her detailed 13 page July 8, 2015 denial summary (with attachments) provided many valid reasons why the petitioner's representative failed to establish the medical necessary of the requested private speech therapy through [REDACTED]. The petitioner's mother and the SLT provider were unable to establish evidence to convincingly refute those reasons for denial in regard to petitioner's request for private speech and language therapy during the summer of 2015. Furthermore, Ms. [REDACTED] correctly referred to prior DHA hearing decisions which are relevant to the instant case:

MPA-11/113233 – The requested ...ST, while it would be beneficial as would any extra services, was not necessary. To receive it would be a bonus, **but MA is meant to cover basic and necessary services, not every possible beneficial services.**

MPA/145440 - . . . The argument that the school-based regimen is only in group or classroom setting, and the private therapy would be 'one-to-one' does not establish that the private regimen is needed and prior decisions of the DHS have sustained the Department, repeatedly, on this point. It could very well be that petitioner requires more intensive private SLT than school can provide. However, **the request must show that need and why the school is insufficient.**"

MPA-5/116573 - . . . The MA program is not required to cover all of the services that a recipient or his parents would like to have him get, **only those that meet the MA program definition of medical necessary.** . . .

MPA-16/76555 - Duplication is not avoided by using somewhat different terminology to describe the goals because it is unlikely that any two providers are going to use exactly the same words. Nor can the provider merely use somewhat different means to reach the goals because if goals are similar the result should be similar. **Medical assistance is meant to provide basic services at a reasonable cost to a large number of persons** and is the payer of last resort, principles not possible if the program reimburses recipients for each bit of therapy that is subtly different from that already provided.

(Emphasis added).

In reviewing the petitioner's mother's testimony and submissions, I agree with Ms. [REDACTED]'s assessment that while those evaluations and school reports are helpful in understanding [REDACTED]'s medical problems, those reports did not establish why private speech and language therapy is medically necessary for the petitioner for the summer of 2015. See Findings of Fact above.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The fee-for-service provider has not established that [REDACTED] has specific speech problems which require the skilled expertise of a private speech therapist. While the petitioner's mother's efforts

and desire for [REDACTED] to achieve as much progress as possible in his speech and language skills is commendable, the petitioner has not established that the requested private SLT is medically necessary. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for a speech language therapy (SLT) evaluation and twice weekly SLT for the 12 weeks of the summer of 2015, due to lack of established medical necessity.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's April 8, 2015 prior authorization request for speech language therapy (SLT) evaluation and twice weekly SLT for the 12 weeks of the summer of 2015, due to lack of established medical necessity.

**THEREFORE, it is**

### **ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

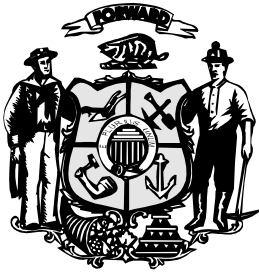
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of November, 2015

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 2, 2015.

Division of Health Care Access and Accountability